



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,256	05/03/2002	Frank Joseph Garvey	148/291	8425

23638 7590 10/07/2003

ADAM EVANS, P.A.
(formerly Adams, Schwartz & Evans, P.A.)
2180 TWO WACHOVIA CENTER
CHARLOTTE, NC 28282

EXAMINER

STRIMBU, GREGORY J

ART UNIT PAPER NUMBER

3634

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,256

Applicant(s)

GARVEY, FRANK JOSEPH

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19, 22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19, 22 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Drawings

The drawings are objected to because the applicant has failed to use the proper cross sectional shading when showing a cross sectional view of the invention. For example, see figure 1 which shows a cross sectional view of the finger protector device but fails to use a cross sectional shading in accordance with MPEP 608.02.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "[t]he present invention provides" on line 1 can be easily implied and therefore should be deleted. Additionally, the legal phraseology "means" on line 3 should be avoided. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 14-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "flexible means" on line 3 of claim 14 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Recitations such as "a member" on line 8 of claim 14 render the claims indefinite because it is unclear if the applicant is referring to one of the members set forth above or is attempting to set forth another member in addition to the one set forth above. Recitations such as "pre-biased at about 90 degrees" is confusing because it is unclear what the applicant is attempting to set forth. It appears that the mounting portions are pre-biased at about 180 degrees rather than 90 degrees. Recitations such as "the member" on line 9 of claim 14 render the claims indefinite because it is unclear which one of the plurality of members set forth above the applicant is attempting to refer to. Recitations such as "creates or close" on line 2 of claim 16 are grammatically incorrect and confusing. Recitations such as "the door frame" on line 2 of claim 25 render the claims indefinite because they lack antecedent basis.

Claim Rejections - 35 USC § 103

Claims 14-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas in view of British Patent Publication No. 2 138 478. Lucas et al. discloses a finger protection device 14 comprising first 28, 29, second 27 and third 26 members, the second member being connected to the first and third members by flexible means 52 and 37, the first member is arranged, in use, to be mounted to a first surface 11 by a first mounting portion 30 connected to the first member by a first flexible section 35 and the third member is arranged, in use, to be mounted to a second surface 12 by a second mounting portion connected to the third member by a second flexible section 50, in which relative movement of the first and second surfaces is possible and in which each of the mounting portions is attached to a member by a flexible plastics joint. Lucas is silent concerning pre-biasing at about 90 degrees.

However, British Patent Publication No. 2 138 478 discloses a finger protection device 1 comprising mounting portions 5 and 6 which are each attached to a member 3, 4, respectively by a joint which is pre-biased at about 90 degrees.

It would have been obvious to one of ordinary skill in the art to provide Lucas with joints, as taught by British Patent Publication No. 2 138 478, to ensure the finger protection device is properly biased away from the door and door frame when the door is closed.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas in view of British Patent Publication No. 2 138 478 as applied to claims 14-19 and 25

above, and further in view of Danish Patent Publication No. 9301278. Danish Patent Publication No. 9301278 discloses a finger protection device comprising mounting portions which are thicker than the remaining portions of the protection device.

It would have been obvious to one of ordinary skill in the art to provide Lucas, as modified above, with thicker mounting portions, to increase the strength of the mounting portions.

Response to Arguments

Applicant's arguments filed July 22, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Lucas, the examiner respectfully disagrees. As shown in figure 2 of Lucas, the first member 28, 29 is connected directly to both the second member 27 and the first mounting portion 30. It should be noted that there is no limitation in the claims would prevent the first member from including a flexible joint 36.

With respect to the applicant's comments concerning British Patent Publication No. 2 138 478, the examiner respectfully disagrees. It is a common practice to show elements of an invention an unstressed state as shown in figure 1 of British Patent Publication No. 2 138 478. Note how the applicant has shown his invention in exactly the same manner. In both cases, figure 1 shows the unstressed state and subsequent figures show the invention in use or a stressed state. Finally, Lucas was concerned with the problem of keeping the center portion of the device from being disposed

between the hinge side of the door and hinge side of the jamb. British Patent Publication No. 2 138 478 teaches that forming the device with the relative orientation of the base portions 5, 6 to the flexible sections 3, as shown in figure 1, keeps the center portion of the device from being disposed between the hinge side of the door and hinge side of the jamb. Therefore, combining the teachings of Lucas and British Patent Publication No. 2 138 478 would be well within the purview of one with ordinary skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-

Art Unit: 3634

305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal line extending from the end of the signature.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
October 6, 2003